

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 357

FLUSHINGSIDE REALTY & CONSTRUCTION CO.,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 14-38) and a memorandum (R. 40-44) accompanying an order of the Tax Court denying the Commissioner's motion to vacate and modify its opinion are not reported. The opinion of the Circuit Court of Appeals (R. 85-87) is reported at 149 F. 2d 572.

(1)

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 23, 1945. (R. 87-88.) The petition for a writ of certiorari was filed on August 22, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The questions presented are the same as those set forth in the Commissioner's brief in opposition in *Winter Realty & Construction Co. v. Commissioner*, No. 356, this term.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are the same as those in No. 356 and are set forth in the Appendix to the Commissioner's brief in opposition in that case.

STATEMENT

The facts in this case are, in all material respects, parallel with those involved in No. 356. Accordingly, the statement of facts has been omitted.

ARGUMENT

The reasons set forth in the Commissioner's brief in opposition in No. 356 why the writ of certiorari should be denied in that case apply with

equal force to this case and need not be repeated here.

It should be noted that an additional issue was presented below which was not involved in No. 356, namely, whether there was support in the record for the findings of the Tax Court that certain acquisitions made by the taxpayer in 1937 were traceable to the condemnation award received in 1936. The petition for certiorari does not seek further review of the reversal by the Circuit Court of Appeals of the Tax Court on this question.

CONCLUSION

The petition for a writ of certiorari should be denied for the reasons set forth in the Commissioner's brief in opposition in No. 356.

Respectfully submitted,

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SEPTEMBER 1945.